

PART 718—CONFIDENTIAL BUSINESS INFORMATION

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SUPPLEMENT NO. 1 TO PART 718—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

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§ 718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 ("the Act") defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

- (a) Financial data;
- (b) Sales and marketing data (other than shipment data);
- (c) Pricing data;
- (d) Personnel data;
- (e) Research data;
- (f) Patent data;
- (g) Data maintained for compliance with environmental or occupational health and safety regulations;
- (h) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;
- (i) Any chemical structure;
- (j) Any plant design, process, technology or operating method;
- (k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;
- (l) Any commercial sale, shipment or use of a chemical; or
- (m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

§ 718.2 Identification of confidential business information.

(a) *General.* Certain confidential business information submitted to BIS in declarations and reports does not need

to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BIS in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.* (1) BIS has identified those data fields on the declaration and report forms that request "confidential business information" as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of the data fields listed in the table included in Supplement No. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.

NOTE TO PARAGRAPH (b): BIS has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify information in your notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See § 718.3(b) for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections,

certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see § 718.3(c)(1)(ii)). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

§ 718.3 Disclosure of confidential business information.

(a) *General.* Confidentiality of information will be maintained by BIS consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information con-

tained in these notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to § 404(b) of the Act—(1) Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).* (i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as “restricted,” “protected,” or “highly protected,” depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized